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8
9 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

10
11 Remedios Nelson,

12 Plaintiff,

13 v.

14 United States of America, through the
15 United States Postal Service, an agency
of the Government of the United States
16 of America, Does I-X; Roe Corporations
I-X,
Defendants.

Case No. 2:18-cv-01515-MMD-NJK

**Motion for Exception from
Attendance Requirements for
Settlement Conference**

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18 Federal Defendant, the United States, moves for an order excepting it from certain
19 requirements of the Order, ECF No. 39, setting a settlement conference, namely, “for a
20 representative with binding authority to settle this matter up to the full amount of the claim
21 or last demand made” to be present in person for the duration of the conference. Order
22 1:16-22. Federal Defendant respectfully requests that it be permitted to participate in the
23 settlement conference via the personal attendance of Assistant United States Attorney
24 Patrick A. Rose, who has litigated the case and has recommendation authority as to
25 potential settlements.
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1 This motion is based on the following Memorandum of Points and Authorities,
2 along with all papers and pleadings on file.

3 Respectfully submitted this 7th day of February 2020.

4 NICHOLAS A. TRUTANICH
5 United States Attorney

6 /s/ Patrick A. Rose
7 PATRICK A. ROSE
8 Assistant United States Attorney
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10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. Introduction**

12 This case arises out of a car accident on August 6, 2015 between Plaintiff Nelson
13 and an employee of the United States Postal Service. Nelson was promptly admitted to the
14 hospital where an orthopedic surgeon repaired her fractured right radius bone. Other
15 asserted injuries and medical treatment are in dispute.

16 Following discovery and the entry of a joint pretrial order, the case has been set for
17 a settlement conference on June 17, 2020. The Order setting the settlement conference
18 requires, among other things, that “a representative with binding authority to settle this
19 matter up to the full amount of the claim or last demand made” be present in person for
20 the duration of the conference. Order 1:16-22, ECF No. 39.

21 Nelson has not made a settlement demand during the litigation. Her pre-litigation
22 demand to the Postal Service was \$510,000, and she is precluded from recovering more
23 than that amount at trial, *see* Minute Order in Chambers, ECF No. 30.

24 **II. Discussion**

25 The federal government is unlike other litigants in terms of geographic breadth,
26 nature of issues, and number of cases. *See United States v. Mendoza*, 464 U.S. 154, 159
27 (1984). The authority to settle most civil cases against the government rests with varying
28 management personnel within the local United States Attorney’s Office or at Department

1 of Justice (“DOJ”) headquarters, depending on the dollar amount and the concurrence of
2 the client agency. *See* 28 C.F.R. § 0.168(a); 28 C.F.R. Part 0, Subpart Y, Appendix. The
3 settlement authority, which has been delegated to United States Attorneys for defensive
4 cases, is limited to \$1 million, and it may not be exercised where the client agency is
5 opposed to the proposed settlement. *See* 28 C.F.R. § 0.168(d)(2); 28 C.F.R. Part 0, Subpart
6 Y, Appendix (e)(1)(iii). Nelson’s pre-litigation demand of \$510,000 exceeds the amount of
7 settlement authority delegated by the United States Attorney to the Civil Chief, and civil
8 line AUSAs have not been delegated any standing settlement authority. With the client
9 agency’s (Postal Service’s) financial losses of billions of dollars in recent years, and no
10 funding or relief from Congress, the Postal Service has sought to lower its costs in a
11 number of ways including reductions in personnel, facilities, and authorized travel for
12 employees. The Postal Service’s tort litigation section has a relatively small number of
13 attorneys to address numerous claims and cases across the country.

14 As the advisory committee recognized, “[p]articularly in litigation in which
15 governmental agencies . . . are involved, there may be no one with on-the-spot settlement
16 authority, and the most that should be expected is access to a person who would have a
17 major role in submitting a recommendation to the body or board with ultimate decision-
18 making responsibility.” Fed. R. Civ. P. 16 advisory committee’s note (1993 amendment,
19 subdivision (c)). Additionally, a district court can consider alternative methods of
20 participation, such as via telephone. *See United States v. United States Dist. Court*, 694 F.3d
21 1051, 1061 (9th Cir. 2012).

22 The United States Attorney’s Office understands the importance of ENEs,
23 settlement conferences, and other alternate dispute resolution techniques in resolving civil
24 cases. This office has participated in many of them, in good faith, and consistent with the
25 authority set forth in the applicable regulations. Recommendations (through the respective
26 DOJ and client agency chains of command) regarding any particular settlement proposal
27 in this case will originate with the assigned AUSA, undersigned counsel.
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1 **III. Conclusion**

2 Based on the reasons and circumstances above, Federal Defendant respectfully
3 requests that the Court grant this motion so as to as to allow AUSA Rose to personally
4 attend and participate in the settlement conference in lieu of the personal attendance
5 requirements otherwise set forth in the Order, ECF No. 39.

6 Respectfully submitted this 7th day of February 2020.

7 NICHOLAS A. TRUTANICH
8 United States Attorney

9 s/ Patrick A. Rose
10 PATRICK A. ROSE
11 Assistant United States Attorney
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15 IT IS SO ORDERED.
16 Dated: February 10, 2020

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Nancy J. Koppe
United States Magistrate Judge
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